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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/834,651	04/16/2001	Takeshi Fukuda	05453.0037	3687

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EXAMINER	
KANTAMNENI, SHOBHA	

ART UNIT	PAPER NUMBER
1617	

DATE MAILED: 09/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No.	Applicant(s)	
	09/834,651	FUKUDA ET AL.	
	Examiner	Art Unit	
	Shobha Kantamneni	1617	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 August 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.

b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
   (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ they raise the issue of new matter (see Note below);
   (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.
   NOTE: _____.
3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a)☐ affidavit, b)☐ exhibit, or c)☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: *see page 2*.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a)☐ will not be entered or b)☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: *1, 3, 6-8 and 12*.

   Claim(s) withdrawn from consideration: *4-5*.
8. ☐ The drawing correction filed on _____ is a)☐ approved or b)☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s)(PTO-1449) Paper No(s).
10. ☐ Other: _____

SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER

Response to Applicant's Arguments/Amendment:
The Applicant's arguments filed August 5, 2004 to the rejection of claims 1, 3-8, and 12 made by the Examiner under 35 USC 103 have been fully considered and deemed not persuasive.

103 Rejection Maintained:
The rejection of claims 1, 3, 6-8, and 12 under 35 U.S.C. 103(a) as being unpatentable over Shibasaki et al. (5,587,010) in view of Fukuda et al. (6,197,277) is MAINTAINED for the reasons set forth in the Final Office Action mailed 05/05/2004, and those found below.
Applicant argues, "Shibasaki et al. never discusses the aspect ratio of alumina particles and never suggests the use of phosphoric compound.... The inventors noted that those particles "still have problems ....with sufficient spreadability...." Examiner maintains the argument of the previous office action that 1) it is well- established that consideration of a reference is not limited to the preferred embodiments or working examples, but extends to the entire disclosure for what it fairly teaches, when viewed in light of the admitted knowledge in the art, to person of ordinary skill in the art and respectfully points out that 2) Shibasaki et al. teach particles with a size of 1.0 um or less and a thickness of 0.1 um or less. This open ended teaching encompasses the instant aspect ratio, 3) Shibasaki et al. teach a process for producing fine flaky alumina particles, wherein alumininium hydroxide or alumina hydrate is regulated to the order of submicron particle size and subjected to hydrothermal treatment . Thus by controlling the production conditions and by using the starting material having a suitable particle size, the aspect ratio of the α-alumina particles can be controlled. Discovering the optimum or workable ranges involves only routine skill in the art, and further points out that 4) Fukuda et al. (6,197,277) teach alumina particles having high dispersibility or plasticity, as a result of the addition of a small amount of a phosphoric acid or phosphate on the surfaçe of the alumina particles. The phosphoric acid or phosphate is present in an amount of 0.1-3%, in terms of P2O5, based on the alumina particles. The particles are taught as having an isoelectric point at which the zeta-potential is 0 is of pH 4 to 8. See abstract; Col. 3, line 8-27,. Col. 4, line 65-Co1. 5, line 4. They also teach particles with low aspect ratio when used as extender pigments for cosmetics result in poor adhesion to the skin and spreading.

Applicant argues, "Such high aspect ratio is simply not contemplated by Shibasaki et al.....and is the result of Examiner's improper tinkering.... This argument is not persuasive because the aspect ratio definition is well known in the art and a person of ordinary skill in the art can calculate the aspect ratio.

Examiner agree's that Shibasaki et al. nowhere teaches or even suggests that alumina particle with only a 10% reduction in diameter would have a 90% reduction in thickness. However it is respectifully pointed out that Shibasaki does not state that the decrease in diameter and thickness are proportionate and so one cannot argue that 10% reduction in diameter would have a 90% reduction in thickness is not possible.

Applicant argues, "average thickness of less than 0.01 um tend to cause crumbling during the course of production of a cosmetic product... and also points that pending claims 6-8 are commensurate in scope..." Examiner maintains the argument of the previous office action and as stated in the non-final office action dated 10/20/2003.

Applicant argues that alumina particles with a larger aspect ratio are properly claimed and are not equivalent to those revealed in Shibasaki. This argument is not persuasive as discussed in the previous office action and as discussed above in the first paragraph.

Applicant argues, "the two references, Shibasaki et al. and Fukuda et al. either separately or in combination, ...do not provide the alumina particles of the pending claims..." Examiner points out that Shibasaki et al. teach particles with a size of 1.0 um or less and a thickness of 0.1 um or less. This open ended teaching encompasses the instant aspect ratio.

SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER